

Australian Capital Territory

Road Transport Legislation Amendment Regulation 2018 (No 2)

Subordinate law SL2018–16

made under the

Road Transport (General) Act 1999, Road Transport (Public Passenger Services) Act 2001 and Road Transport (Vehicle Registration) Act 1999

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Road Transport Legislation Amendment Regulation 2018 (No 2)* (the regulation) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the regulation. It does not form part of the legislation and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

This regulation amends the:

- *Road Transport (General) Regulation 2000*
- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Public Passenger Services) Regulation 2002*
- *Road Transport (Vehicle Registration) Regulation 2000*

The amendments in this regulation:

- (a) Align the regulatory settings across public passenger modes, in particular across light rail and bus services. These amendments provide customers with as seamless an experience as possible across the Territory's public transport network through consistency in the regulatory settings (for example, passenger conduct) and operational aspects (for example, ticketing system).

- (b) Set infringement penalty amounts for light rail related offences.
- (c) Implement a budget decision to increase penalty amounts across the public passenger legislation by six per cent.

The regulation also makes a number of minor and technical amendments to accord with current drafting practices and reflect changes made to the *Sale of Motor Vehicles Act 1997*.

The authority to make this regulation is contained in:

- sections 23 and 233 of the *Road Transport (General) Act 1999*
- sections 24, 25, 26, 27, 27D and 126 of the *Road Transport (Public Passenger Services) Act 2001*
- section 13 of the *Road Transport (Vehicle Registration) Act 1999*

Human rights implications

During the development of this regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

This regulation engages the following rights under the HRA:

- section 8 – recognition and equality before the law
- section 11 – protection of the family and children
- section 12 – privacy and reputation
- section 13 – freedom of movement
- section 16 – freedom of expression
- section 18 – right to liberty and security of person
- section 22 – rights in criminal proceedings.

Section 28 of the HRA provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (a) the nature of the right affected
- (b) the importance of the purpose of the limitation
- (c) the nature and extent of the limitation
- (d) the relationship between the limitation and its purpose
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

An assessment of the regulation against section 28 of the HRA is provided below.

Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve safe and accessible public passenger services for the Territory.

Recognition and equality before the law

Section 8 of the HRA provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

‘Equality before the law’ has been essentially held to mean that judges and administrative officials must not act arbitrarily in enforcing laws¹. The non-discrimination provisions in the HRA are founded on articles 2 (1) and 26 of the International Covenant on Civil and Political Rights (the ICCPR). ‘Discrimination’ as the term appears in the ICCPR is understood as meaning any ‘distinction, exclusion, restriction or preference which is based on any ground which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms’.

It is within community expectations that access to public facilities and services are regulated so that they are safe, efficient, effective and affordable for everyone. To the maximum extent possible, in regulating the light rail service and aligning regulatory settings across the public transport modes, the approach has been to limit any disproportionate impacts on any particular groups. However, it has been necessary to include provisions that could put some members of the community at a disadvantage.

It has also been necessary to engage in positive discrimination by taking steps to ensure that specific groups within society are not being disadvantaged when using public passenger services.

Nature of the right affected

This regulation:

- Clarifies the current position that bus drivers, authorised persons and police have the power to direct a person to get off or not get on a bus if the person is under the influence of liquor or a drug and is causing, or is likely to cause, a nuisance or an annoyance to someone else.
- Aligns offences based on conduct of passengers or the public for bus services with those for light rail services. These offences could be seen to disadvantage certain members of the community.

¹ NNowak, M *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised edition, N.P. Engel, Publisher, 2005 at 606

- Clarifies the current position relating to access to bus services by people with disabilities, including permitting assistance animals.

These provisions may engage the right to equality and non-discrimination because they have the potential to disproportionately impact on certain segments of the community – for example, groups that rely on public transportation as their only mode of transportation, or drug and alcohol users. However, the offences are drafted so that the emphasis is on the behaviour and the risk it poses to public safety and property, rather than a particular character trait or aspect of an individual.

The importance of the purpose of the limitation

The ability to move on a person who is intoxicated or under the influence of a drug and is behaving in a way that causes, or is likely to cause, a nuisance or annoyance to someone else, is important to ensure the safety of the public and amenity of public passenger services for the benefit of the broader community.

Passengers on buses will in most instances not have the option to remove themselves from the behaviour, especially if the bus is crowded. Therefore, if there is risk of harm to the individual or the public, the source of the harm should be able to be removed.

The nature and extent of the limitation

The amendments contained in this regulation to the regulatory settings for bus services are consistent with those for light rail services and other public passenger services in the Territory. The provisions are drafted to limit any disproportionate impacts on any particular groups.

The relationship between the limitation and its purpose

This regulation supports harm reduction by ensuring people that are intoxicated or under the influence of a drug do not enter or remain on a bus where they may pose a risk to themselves or the broader community.

The training of authorised persons will draw to their attention the *Liquor (Intoxication) Guidelines 2017* issued under the *Liquor Act 2010* that sets out a number of signs of intoxication, relating to behaviour (including aggression, using offensive language and vomiting), speech (including slurred or incoherent speech), coordination and balance. It is important to note that the offences in relation to intoxication on bus services are focused on the behaviour of the intoxicated person causing or being likely to cause nuisance or annoyance to someone else. The fact that a person is intoxicated or under the influence of drugs is not in and of itself an offence. Public passenger services should be viewed as an alternative to driving for people who are intoxicated or under the influence of drugs.

Authorised persons will be encouraged to both observe and talk to people thought to be intoxicated or under the influence of a drug before making a decision to direct

them to leave a bus. Authorised persons will also be trained in discrimination standards, cultural sensitivities and awareness of mental health issues.

Less restrictive means reasonably available to achieve this purpose

It is not considered that there are any less restrictive means available to achieve the purpose of reducing alcohol and drug related harm and ensuring the safety of passengers and members of the public on public passenger services.

Right to protection of the family and children

Section 11 (2) of the HRA provides that ‘every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind’.

Minors are entitled to special protection in recognition of their vulnerability because of their status as a child. This is not limited to the treatment within the family but extends to treatment by others and public authorities².

The *Criminal Code 2002* (sections 25 and 26) establishes the age at which a child is criminally responsible for an offence (10 years) and that a child aged 10 years or older, but under 14 years old, can only be criminally responsible for an offence if the child knows that his or her conduct is wrong. The prosecution has to prove that the child knew their conduct was wrong.

Nature of the right affected

This regulation aligns a number of existing criminal offences relating to ticketing, passenger conduct and conduct of the public on bus services with those for light rail services. These offences could engage a child’s right to protection as these offences could be applied to them. The offences in this regulation cannot be applied to children under 10 years of age as they cannot be held criminally responsible for their actions.

The importance of the purpose of the limitation

While potentially limiting a child’s right to protection, the application of these offences to a child are justified and reasonable because it is in the wider public interest to have public passenger services that are properly regulated.

The nature and extent of the limitation

The rights of the child can be limited under this regulation through being issued with an infringement notice or asked to leave a bus or not get on a bus. The impact of these powers on freedom of movement and deprivation of liberty are discussed separately.

Infringement notices are only suitable when the offence does not require proof of intention or some other mental element. Section 26 of the Criminal Code requires the

² Department of Justice and Community Safety, *Guidelines for ACT Departments: Developing Legislation and Policy*, February 2010, p 27.

prosecution to prove for a child aged 10 years or older, but under 14 years old, that the child knew that the conduct was wrong (mental element of knowledge).

Accordingly, an infringement notice can only be issued to a child who is 14 years of age and older but not older than 18 years old. This regulation introduces a set infringement penalty amount for children who are 14 years of age and older but not older than 18 years old. Without establishing a specific amount for a child, the default amount would apply. The creation of a specific child rate for offences conducted on bus services and light rail services is consistent with the approach adopted in Victoria. Future consideration will be given to whether this should be extended to other public passenger services.

The relationship between the limitation and its purpose

It is important that the application of ticketing offences and conduct offences related to public passenger services are applied consistently across the modes, where appropriate, to provide customers with a seamless experience.

It is important that any risk to public safety can be appropriately addressed and in some instances this will require the moving on of those people causing the risk. This should be able to be applied to all persons, irrelevant of age.

Less restrictive means reasonably available to achieve this purpose

It is not considered that there are any less restrictive means available to appropriately regulate public passenger services.

Authorised persons will be appropriately trained when engaging with children on public passenger services to ensure that they are treated in a way that is appropriate for their age.

The introduction of a specific infringement penalty amount for a child addresses the current situation where a child would be issued with the same fine as an adult.

Right to privacy

Section 12 of the HRA provides that everyone has the right to not have his or her privacy interfered with unlawfully or arbitrarily.

This regulation can be considered to be engaging these rights by clarifying the existing provisions relating to:

- security cameras on buses
- provision of a person's details to police, authorised persons and bus drivers to enable enforcement activity to occur
- incident reporting requirements

Nature of the right affected

Bus operators are required to inform passengers when a bus is fitted with a security camera, provide recordings when requested by police or the road transport authority,

retain recordings for at least 30 days and destroy recordings within a reasonable time after those 30 days. This footage may be used to investigate any incidents that occur.

Accredited operators of bus services are required to report notifiable incidents to the road transport authority. A notifiable incident includes any accident or incident in which death or bodily injury is caused by or arises out of the use of a bus used to provide the bus service.

The importance of the purpose of the limitation

The limitation will achieve the important purpose of protecting bus drivers and members of the community by ensuring that appropriate action can be taken in relation to any incidents and allow enforcement of the regulatory framework for public passenger services.

The nature and extent of the limitation

Members of the public are likely to understand that using public transport involves a necessary limitation on their right to privacy and are therefore unlikely to have a reasonable expectation of privacy when using a public transport service.

Bus service operators are required to place signs in buses, where they can be easily seen, informing the public and passengers that security cameras operate thus putting people on notice that they may be recorded.

Disclosure of reports of notifiable incidents will be limited to those involved in any investigation of the incident – the Territory, Police, the accredited bus service operator. Any interference with privacy in relation to reporting of notifiable incidents will only apply to those individuals who are involved in such an incident.

Where a police officer or authorised person believes, on reasonable grounds, that a person is committing or has committed an offence under the *Road Transport (Public Passenger Services) Act 2001*, they may require a person to state their name and address (section 121 of the *Road Transport (Public Passenger Services) Act 2001*). The police officer or authorised person must tell the person the reason for the requirement and produce his or her identity card for inspection by the person. The provision of identifying information is an essential part of the effectiveness of any scheme designed to protect the public.

The relationship between the limitation and its purpose

In addition to their deterrent effect, use of security camera footage is also valuable for investigation and prosecution of crime.

Requiring people to provide their name and address directly relates to the purpose of effective enforcement, public safety and protection of property and revenue.

Less restrictive means reasonably available to achieve this purpose

There are no less restrictive means reasonably available to achieve safe and accessible public passenger services as the provision of personal information and the collection of personal information are an essential part of revenue protection (fare evasion) and ensuring the safety of passengers and the public. The requirement to give information, answer questions or anything else reasonably needed, is fundamental to the safe and accessible operation of a public passenger service.

If individuals did have a reasonable expectation of privacy when using public transport and the use of security cameras constituted an interference with their privacy, the interference is likely to be reasonable and justified, given the role of the security cameras in protecting the safety of bus drivers, passengers and members of the public. Any interference would be lawful and not arbitrary.

The Territory and police are subject to the *Information Privacy Act 2014*, in particular the territory privacy principles.

Freedom of movement

Section 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. This is relevant in the ACT today, in respect to circumstances involving people's access to public places. The right to move freely within the ACT means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular location.

The right has inherent limitations, which are acknowledged at subsection (3) of article 12 of the International Covenant on Civil and Political Rights (the ICCPR) (the equivalent right to section 13 of the HR Act):

the rights to liberty and freedom of movement shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights or freedoms of others and are consistent with the other rights recognised in the Covenant.

Nature of the right affected

This regulation clarifies that:

- a person is required to have a valid ticket to travel on a bus service
- a person is required to produce a valid ticket for inspection when requested by a police officer or authorised person
- bus drivers, police and authorised persons have the power to direct a person to leave or not get on a bus
- police have the power to remove a person from a bus

The regulation expands when a police officer or authorised person can require a person to present a valid ticket for inspection. Currently this is only permitted when a person is in a bus. This regulation extends this to include when a person has just got off a bus. This is consistent with the regulatory settings for light rail services.

The importance of the purpose of the limitation

The purpose of this limitation is to protect the public and property, from the dangers posed by behaviour in a public place. Protecting the public from behaviour that interferes with the comfort and safety of others is of high importance.

The nature and extent of the limitation

The powers in this regulation that can be argued to restrict a person's access to a public place are considered to be appropriate legislative mechanisms to address fare evasion and protect the public and property.

The relationship between the limitation and its purpose

The limitation is not extensive. The power to direct a person to leave a bus is limited to circumstances where the person is committing or has just committed a ticketing or conduct offence or the person's behaviour poses undue risk to other people, revenue or property.

Authorised persons must satisfy the reasonable grounds test before directing a person to leave a bus or not get on a bus. An authorised person must have appropriate grounds for giving the direction. Authorised persons will be trained to ensure that the person being issued with the direction is informed that failure to comply with a direction may result in them committing an offence and/or being removed from the bus. This provides the person with an opportunity to modify their behaviour.

Police officers must satisfy the reasonable grounds test before removing a person or directing a person to leave a bus or not get on a bus. The ability to remove a person from a bus is limited to police.

This minimises the risks of unreasonable force being applied to a person or a person being unreasonably or illegally detained as the persons exercising the powers are suitably qualified and know the legal concepts surrounding reasonable force and what constitutes lawful detention.

This regulation seeks to support an early intervention process where a person has the ability to leave a bus of their own accord once given a direction by an authorised person.

Furthermore as buses are used by people of various ages, the dangers represented by such behaviour highlight the need for public safety measures dealing with that behaviour to be directed at changing the behaviour, or removing the source of the behaviour, as quickly as possible.

Less restrictive means reasonably available to achieve this purpose

There is no less restrictive means available as without the limitation on the right to freedom of movement in these situations, the Territory, police and bus drivers would not have sufficient powers to protect the public, property and take action against fare evasion.

There comes a point in time where a person must modify their behaviour or be subject to the consequences.

Furthermore, a number of mechanisms and specific safeguards have been inserted throughout the early intervention process to limit the human rights impact at those stages. For example, removal and refusal of entry must only occur in those circumstances specified in new section 66C of the *Road Transport (Public Passenger Services) Regulation 2002*.

Passengers on buses, in most instances do not have the option to remove themselves from any behaviour that is perceived as causing risk to them, especially if the bus is crowded. Therefore, if there is risk of harm to the individual or the public, the source of the harm should be able to be removed.

Right to freedom of expression

Section 16 of the HRA provides that everyone has the right to hold opinions without interference and the right to freedom of expression. The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, orally, in writing, in print, by way of art or in any other way a person chooses.

Under article 19 (3) of the International Covenant on Civil and Political Rights ('the ICCPR') (from which section 16 derives), freedom of expression may be limited as provided for by law and in circumstances where it is necessary to protect the rights or reputations of others, national security, public order, public health or morals.

Nature of the right affected

The right to express oneself and one's views on any given issue is a fundamental part of Australian democracy.

Section 66C (1) (d) of the *Road Transport (Public Passenger Services) Regulation 2002* as set out in this regulation provides bus drivers, authorised persons and police officers with the power to direct a person to get off, or not get on, a bus if they are under the influence of alcohol or a drug and are causing or are likely to cause a nuisance or annoyance to someone else. The annoyance or nuisance must be directly related to the person's intoxication or drug use. This section does not give bus drivers, authorised persons or police officers the power to direct a person to get off, or not get on, a bus simply because the person's behaviour is causing or likely to cause a nuisance or annoyance to someone else.

Section 66C (1) (a) (ii) provides bus drivers, authorised persons and police officers with the power to direct a person to get off, or not get on, a bus if the person is committing, or had just committed an offence against part 3.3 (Bus passengers), which includes behaviour that interferes with comfort or safety (section 52). Section 52 (2) makes it a strict liability offence for a person to use offensive language, behave in an offensive way or behave in an aggressive or menacing way. This offence in conjunction with the powers in section 66C could be argued to engage the right to freedom of expression in section 16 of the HRA.

It is within community expectations that access to public facilities and services are regulated so that they are safe, efficient, effective and affordable for everyone. To the maximum extent possible, in regulating public passenger services in the Territory, the approach has been to limit any disproportionate impacts on people.

Details of the exercise of powers by authorised persons and police are covered in other sections of the human rights implications section of this explanatory statement.

The importance of the purpose of the limitation

The purpose of the limitation, protecting the public, from the dangers posed by behaviour in a public place that interferes with the comfort and safety of others is of high importance.

The offences are drafted so that the emphasis is on the behaviour and the risk it poses to public safety, rather than a particular character trait or aspect of an individual.

Passengers on a bus do not in most instances have the option to remove themselves from the behaviour, especially if the bus is crowded. Therefore, if there is a risk of harm to the individual or the public, the source of the harm should be able to be removed.

The nature and extent of the limitation

This regulation creates provisions that align with existing provisions for public passenger services in the Territory.

The provisions do not interfere with a person's more general right to express themselves or their views. The provisions regulate this behaviour where it is offensive, aggressive or menacing and impacts on public order and the rights of others to safe use of public facilities.

The relationship between the limitation and its purpose

It must be recognised that people are generally aware of what behaviour is considered appropriate on public transport and at public transport related areas. The potential risks of ineffective regulation of public passenger services include an environment where public safety measures are not in place.

Less restrictive means reasonably available to achieve this purpose

There are no less restrictive means available to deliver safe and accessible public passenger services and protect the public. Unacceptable passenger conduct is known to make people less willing to use public transport modes.

Right to liberty and security of person

Section 18 of the HRA provides that everyone has the right not to be arbitrarily arrested or detained and no-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law. This right can be relevant any time a person is not free to leave a place by his or her own choice. This includes the interim detention of a person, for example, to allow a public authority to control movement within an area.

Nature of the right affected

Under this regulation, passengers on a bus service can be detained to provide evidence that they hold a valid ticket for travel.

Bus drivers, authorised persons and police officers also have the power to direct a person to leave a bus or not get on a bus. Police officers also have the power to remove a person from a bus.

The importance of the purpose of the limitation

While potentially limiting a person's right to liberty, this regulation is justified and reasonable because it is in the wider public interest to have public passenger services that are properly regulated. The limitations allow community enjoyment of these services and ensure the safety and security of the community and revenue protection.

The nature and extent of the limitation

Authorised persons are authorised under existing provisions in the *Road Transport (General) Act 1999*. There are a number of mandatory criteria a person must meet under that Act in order to be appointed as an authorised person, this includes:

- being an Australian citizen or a permanent resident of Australia
- satisfying the road transport authority that they are a suitable person having regard in particular to:
 - whether the person has any criminal convictions
 - and
 - the person's employment record
- completing adequate training to exercise the powers being given to the person.

Authorised persons appointed by the road transport authority are restricted to only the minimum powers necessary to ensure safety and security in buses and undertake revenue protection activities.

The relationship between the limitation and its purpose

A person must not be detained for longer than is reasonably necessary to remove the person, inspect the person's ticket or issue the person with a direction.

Less restrictive means reasonably available to achieve this purpose

It is not considered that there are any less restrictive means available to appropriately regulate public passenger services.

Strict liability offences

This regulation remakes several existing offences and creates new offences to which strict liability will apply. The reasons for applying strict liability are explained in the clause notes for each provision. In the case of remade offences, these offences have generally been interpreted as attracting strict liability and the intention is to maintain the current situation.

The strict liability offences created or remade by this regulation cover:

- obligations on accredited bus service providers
- conduct of passengers on bus services
- conduct of the public at light rail stops

These offences are consistent with existing offences for other public passenger services in the Territory and other jurisdictions.

This regulation may be seen as engaging the following rights under section 22 of the HRA:

- the presumption of innocence until proven guilty (section 22 (1))
- right against self-incrimination (section 22 (2) (i))
- right of a child who is charged with a criminal offence to a procedure that takes into account the child's age and the desirability of promoting the child's rehabilitation (section 22 (3)).

This regulation creates or amends the following strict liability offences in the *Road Transport (Public Passenger Services) Regulation* that are applicable to an accredited operator of a bus service:

- section 14 Notification of change in details of accreditation or operation of regulated service
- section 15 Holder of conditional accreditation to comply with conditions
- section 17 Production of certificate of accreditation
- section 20C Regulated service must comply with service standards

- section 22 Fleet and maintenance records for buses to be made
- section 24 Notifiable incidents involving buses
- section 25 Condition of buses
- section 27 Records of bus drivers to be maintained by accredited operator
- section 28 Keeping and inspection etc of records about buses
- section 31 Signs about security cameras in buses
- section 32 Bus operator's responsibilities for security camera recordings
- section 37 Maximum number of passengers in buses
- section 38 Lost property in bus

This regulation creates or amends the following strict liability offences in the *Road Transport (Public Passenger Services) Regulation* that are applicable to bus drivers, passengers and members of the public:

- section 35 Requirements about bus drivers stopping for passengers
- section 36 Where bus drivers must stop of a road
- section 39 Passengers not to be carried in certain parts of a bus
- section 47 Valid bus ticket required for travel
- section 48 Bus ticket not transferable
- section 49 Damaged or changed bus ticket not to be used
- section 51 Inspection of bus ticket
- section 52 Behaviour that interferes with comfort or safety
- section 53 Inconvenient or dangerous items in bus
- section 54 Obstructing bus door
- section 55 Getting on or off bus
- section 56 Passenger not allowed in certain parts of bus
- section 57 Throwing objects in or from bus
- section 58 Vacating designated seats in bus
- section 59 Liquor in bus

- section 61 Eating or drinking in bus
- section 62 Animal in bus
- section 63 Lost property found on bus
- section 64 Removing bus property
- section 65 Damaging bus property
- section 66 Interfering with security camera or recording
- section 66A Interfering with bus equipment
- section 66B Littering in bus
- section 66C Bus driver, authorised person or police officer—power to direct person to get off, or not get on, bus

Nature of the right affected

The rights under section 22 of the HRA are very important rights that have long been recognised in the common law and are now codified in the ACT through the HRA. These rights may be subject to limits, particularly when those who are subject to the offence would be expected to be aware of its existence.

The proposed strict liability offences are regulatory in nature, and target regulatory requirements that are essential to establishing and maintaining safe, efficient, effective and affordable public passenger services. It is reasonable to expect that those operator bus services and the public know, or ought to know, their legal obligations.

The importance of the purpose of the limitation

It is considered paramount that these offences be ones of strict liability to discourage certain behaviour in public passenger vehicles, protect property and revenue and public safety. As the primary purpose of public passenger services is to transport all members of the community, the maximum penalty units applied for each offence reflect the Government's commitment to transport that is accessible to all members of the community.

People are generally aware of what behaviour is considered appropriate on public transport and at public transport related areas. For a person to commit an offence under this regulation they would be required to be actively involved in the behaviour resulting in the offence. The majority of offences in this regulation already exist and are simply being aligned with current drafting practices, including clarifying that offences are strict liability offences by specifically stating that in the provision. Offences that are being clarified as strict liability offences currently have an infringement penalty attached.

It is incumbent on public passenger operators, who are providing direct services to the public, to know and understand the regulatory settings in which they are operating. This is in the interests of everybody's safety and the integrity of the public transport industry in the Territory.

The nature and extent of the limitation

The requirements to which the offences apply are not burdensome in nature and relate to ensuring public passenger services are operated in a manner that is safe, efficient effective and affordable.

The penalties for these offences are within the normal range for strict liability offences and are comparable to existing offences.

In developing and amending these offences due regard was given to the guidance provided in the *Guide for Framing Offences*.

The relationship between the limitation and its purpose

A robust regulatory framework is important in deterring conduct that has the potential to bring harm to a range of people. The inclusion of strict liability offences supports the Government's commitment to a seamless customer experience across modes and an effective infringement notice scheme. Effective infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

The potential risks of ineffective regulation of public passenger services include an environment where public safety measures are not in place. The Government considers that the strict liability offences in this regulation are relevant to ensuring the safety of passengers and the public engaging with public passenger services.

The offences address matters which society either regards as generally unacceptable behaviour or a risk to health and safety, property or revenue.

Less restrictive means reasonably available to achieve this purpose

It is not considered that there are any less restrictive means to deliver safe and accessible public passenger services in the Territory. Unacceptable passenger conduct is known to make people less willing to use public transport modes.

This regulation does not significantly change the existing regulatory settings. It predominately aligns existing offences with current drafting practices and clarifies that offences are strict liability offences by specifically stating that in the provision. Offences that are being clarified as strict liability offences currently have an infringement penalty attached. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Bus drivers and authorised persons will be appropriately trained when engaging with children to ensure that children are treated in a way that is appropriate for their age. In addition, they are required to hold a working with vulnerable people registration.

Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence of mistake of fact for strict liability offences. Section 23 (3) of the *Code* provides that other defences may also be available for strict liability offences, including the defence of intervening conduct or event (section 39), duress (section 40), sudden or extraordinary emergency (section 41), self-defence (section 42) or lawful authority (section 43).

In addition, some of the offences applicable to accredited operators of bus services, include an element of reasonableness, for example, requiring something to be done within a reasonable period of time.

Climate change implications

There are no climate change implications associated with this regulation.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Regulation

This clause specifies the name of the regulation. This clause provides that the regulation may be cited as the *Road Transport Legislation Amendment Regulation 2018 (No 2)*.

Clause 2 Commencement

This clause provides for the commencement of the regulation in two parts. Section 3, section 5, section 7 and part 5 of this regulation commence on the day after notification and the remaining provisions commence on 8 October 2018. This two phase commencement is required to enable system changes to be made to include the new light rail offences, the re-numbered bus offences and the infringement penalty increases.

Clause 3 Legislation amended

This clause names the regulations that are being amended by this regulation. This regulation amends the:

- *Road Transport (General) Regulation 2000*
- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Public Passenger Services) Regulation 2002*
- *Road Transport (Vehicle Registration) Regulation 2000*

Clause 4 Legislation repealed

This clause repeals the following legislation that approves bus service vehicle livery and is consequential on changes made by clause 34:

- *Road Transport (Public Passenger Services) (Bus Service Vehicle Livery) Approval 2006 (No 1) (NI2006-313)*
- *Road Transport (Public Passenger Services) (Bus Service Vehicle Livery) Approval 2010 (No 1) (NI2010-698)*
- *Road Transport (Public Passenger Services) (Bus Service Vehicle Livery) Approval 2016 (No 1) (NI2016-711)*

Part 2 Road Transport (General) Regulation 2000

This part amends the *Road Transport (General) Regulation 2000* to make minor and technical amendments.

- Set infringement penalties for offences relating to light rail services.
- Implement changes consequential on amendments made in Part 4 of this regulation to align the regulatory settings for bus services and light rail services.
- Update the infringement penalty in column 5 in accordance with the decision of budget cabinet to increase road transport infringement penalties by six per cent.
- Make minor and technical amendments to align short descriptions with the language in the associated provision.

The *Guide for Framing Offences* provides that infringement notice penalties should not be more than 20% of the maximum possible court imposed penalty. Many infringement penalty amounts in the public passenger services legislation are already equal to or more than 20% of the maximum possible court imposed penalty. The reasoning for the long-standing policy decision that an infringement notice should not exceed 20% of the maximum fine stipulated in the offence is to:

- Ensure that the infringement notice amount is a sufficient incentive for a person to forego their right to a trial and avoid using up valuable court time and resources
- Minimise the harm to innocent recipients who decide to pay the notice, irrespective of whether they believe they are innocent.

Whilst a number of infringement penalty amounts in the public passenger services legislation are over the 20% limit, the infringement penalty amounts are generally in respect to offences that carry a safety risk for the public. The infringement penalty amounts are generally consistent across the various modes for conduct of a similar nature. The amounts are also not inconsistent with other jurisdictions.

A holistic review of the public passenger services infringement framework will be undertaken in the next 12 months. This review will consider whether the current amounts are appropriate, any disproportionate impact on vulnerable members of the community, consistency across public passenger services and sanctions available for non-payment of an infringement notice. Sanctions available under the road transport law are directly related to a person's driver licence, vehicle registration or right to drive.

The amendments also introduce a reduced infringement penalty for offences committed by a child who is 14 years of age and older but not older than 18 years old. This rate does not include a victims services levy component. It does not need to be specifically exempted in the *Victims of Crime Regulation 2000* as this only applies to offences committed by adults.

Section 25 of the *Criminal Code 2002* establishes that the age at which a child is criminally responsible for an offence is 10 years old. Section 26 of the Criminal Code requires the prosecution to prove for a child aged 10 years of older, but under 14 years old, that the child knew that the conduct was wrong. As such an infringement notice cannot be issued in these circumstances. Without establishing a specific rate for a

Clause 18**Section 17**

This clause remakes the existing section 17 to align this provision with current drafting practices and clarify that this offence is a strict liability offence. This offence is currently an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Clause 19**New section 20C (3)**

This clause is a technical amendment to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. This offence is currently an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Clause 20**Section 22 (1) (i)**

This clause makes minor and technical amendments to the existing requirements relating to written records that the accredited operator of a bus service must keep about notifiable incidents and other accidents or incidents to align with section 24 and is consequential on changes made by clauses 22 to 25. These amendments ensure consistency in terminology across the Public Passenger Services Regulation.

Clause 21**New section 22 (3) and (4)**

This clause is a technical amendment to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. This offence is currently an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

It also includes a definition of *notifiable incident*. This definition is currently included in section 24.

Clause 22**Section 24 (1) and (2)**

This clause is a minor and technical amendment to align the terminology in the provision with that used in the heading and the terminology used for light rail services.

Clause 23**Section 24 (3)**

This clause omits section 24 (3) and is consequential on the changes at clause 25.

Clause 24**Section 24 (4)**

This clause is a minor and technical amendment to align the terminology in the provision with that used in the heading and the terminology used for light rail services.

Clause 25 **Section 24 (5)**

This clause makes a technical amendment to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. This offence is currently an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

It also replaces the use of *notifiable accident* with *notifiable incident* as a consequence of the changes at clauses 21 to 24 and also amends the definition of *notifiable incident* to point to the definition in section 22 of the Public Passenger Services Regulation.

Clause 26 **New section 25 (1A)**

This clause is a technical amendment to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict liability offence. This offence is currently an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence.

Clause 27 **Section 27**

This clause remakes existing section 27 to align with current drafting practices and the regulatory settings for light rail drivers.

Clause 28 **Section 27B heading**

This clause amends the heading to section 27B to reflect the changes made at clause 29 to require the road transport authority to share information about bus drivers.

Clause 29 **Section 27B (2)**

Currently the road transport authority is not required to share information about bus drivers with accredited operators of bus services. This is inconsistent with the regulation of light rail services which compels the road transport authority to share information with a light rail service operator in respect to any suspension or cancellation of a driver licence of a *light rail driver*, *light rail driving instructor* or *light rail driving assessor* when provided with a *light rail driver record*, *light rail driver assessor record* or *light rail driving instructor record* by the light rail service operator.

This amendment compels the road transport authority to share information with an accredited operator of a bus service about bus drivers and ensures a consistent regulatory framework across the Territory's public transport network.

Clause 30 **New section 28 (2A)**

This clause is a technical amendment to align this provision with current drafting practices that require a strict liability offence to specifically state that it is a strict

Clause 42

Section 51

This clause remakes section 51 to clarify who can require a person to produce their ticket for inspection. Section 51 is remade in accordance with current drafting practices, in particular the requirement that a strict liability offence must specifically state that it is a strict liability offence. This offence is an infringement notice offence. The *Guide to Framing Offences* states that in order for an offence to be an infringement notice offence it must be a strict liability offence. These amendments also align this provision with the regulatory settings for light rail services.

Clause 43

Part 3.3

This clause replaces existing part 3.3 which regulates the conduct of passengers on bus service. The amendments remake the provisions in accordance with current drafting practices and align the regulation of passenger conduct on buses with the regulatory settings for light rail services and other public passenger services in the Territory to provide people with a seamless experience and consistency in conduct.

Behaviour that interferes with comfort of safety New section 52

This provision replaces existing section 52 (Conduct of people in buses generally) to be in accordance with current drafting practice and to align with the regulatory settings for light rail services.

This provision remakes the existing strict liability offence for a person in a bus to put their feet on a bus seat, obstruct a bus seat, spit or use a wheeled recreational device (for example, a skateboard). The maximum penalty for this offence remains at five penalty units.

This provision introduces a new strict liability offence in relation to conduct of people in buses. It makes it a strict liability offence for a person in a bus to use offensive language, behave in an offensive way or behave in an aggressive or menacing way. The maximum penalty for this offence is 10 penalty units. Such actions by passengers raise concerns for driver and public safety. This offence is consistent with the offence for the same conduct on light rail services.

This provision introduces a new offence in relation to conduct of people in buses. It makes it an offence for a person in a bus to unreasonably interfere with the comfort or safety of someone else. The maximum penalty for this offence is 10 penalty units. This offence is intended to cover behaviours not otherwise covered in this provision that interfere with the comfort and safety of other people on buses. This offence is consistent with the offence for the same conduct on light rail services.

Inconvenient or dangerous items in bus New section 53

This provision replaces existing section 39 (Restrictions on carriage of goods in buses) to be in accordance with current drafting practice and to align with the regulatory settings for light rail services.

This provision gives bus drivers, authorised persons and police officers the power to direct a person who brings an *inconvenient or dangerous item* onto a bus to place the item in a *storage area* in the bus or remove the item from the vehicle. It is a strict liability offence not to comply with the direction of a bus driver, authorised person or police officer under this section. The maximum penalty for this offence is five penalty units. This offence does not apply to anything that is assisting a person with a disability.

An item is considered to be an *inconvenient or dangerous item*, if due to its size or nature it cannot be carried on a bus without inconvenience or danger to someone else. The Territory and accredited operators of bus services will provide guidance to passengers on what items are considered to be inconvenient or dangerous items to be carried on a bus.

Obstructing bus door **New section 54**

This provision remakes a component of existing section 57 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to obstruct a bus vehicle door. The maximum penalty for this offence is five penalty units.

Getting on and off bus **New section 55**

This provision remakes existing section 56 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence to get on or off a bus that is moving, or is at a place other than a bus stop or through an emergency exit or roof hatch. The maximum penalty for this offence is five penalty units. This offence does not apply when a person has been lawfully directed to get on or off a bus in any of these circumstances or there is a sudden or extraordinary emergency.

Passenger not allowed in certain parts of bus **New section 56**

This provision remakes existing section 59 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to enter the driver's compartment of a bus or occupy a driver's seat or part of a driver's seat. The maximum penalty for this offence is five penalty units.

This provision makes it a strict liability offence for a person in a bus, while a bus is moving, to travel:

- in a part of the bus not designed to carry passengers

- in a part of the bus beside or in front of the driver's seat
- in a part of the bus designed to carry passengers in a way for which that part is not designed (for example, sitting on the floor)
- standing on the upper deck of a bus

The parts of a bus not designed to carry passengers includes the roof, steps, footboard and exterior surfaces of the bus. The maximum penalty for this offence is five penalty units.

Throwing objects in or from bus New section 57

This provision remakes existing section 58 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to throw anything in or from a bus. The maximum penalty for this offence is five penalty units.

Intentionally throwing an object at, dropping an object on, or placing an object in the path of, a bus is an offence under section 28A of the *Crimes Act 1900*.

Vacating designated seats in bus New section 58

This provision remakes existing section 53 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to occupy or continue to occupy a seat set aside for a designated person when a designated person is standing or indicates they wish to use the seat. A designated person includes an older person, a person with a disability and a pregnant person. Designated seats in a bus are clearly signposted. The maximum penalty for this offence is five penalty units.

Liquor in bus New section 59

This provision remakes existing section 54 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to consume liquor or low-alcohol liquor or be in the possession of an open container of liquor or low-alcohol liquor in a bus. Consistent with possession of alcohol offences in the *Liquor Act 2010*, a substance is presumed to be liquor or low-alcohol liquor if it is in a container and a label or other mark on a container describes the content as liquor or low-alcohol liquor. The maximum penalty for this offence is five penalty units.

This offence is not intended to apply in circumstances where a person has been out for a meal and is carrying the remnants of a bottle of wine purchased to enjoy with the meal.

This offence does not apply if the liquor is supplied in the bus by, or with the permission of, the accredited operator of the bus service, for example, a party bus.

It is recognised that people are generally on notice concerning where alcohol may be consumed. For a person to commit an offence under this provision they would be required to be actively involved in the consumption of liquor or the possession of liquor. Noting the potential risks associated with consumption or possession of alcohol in a bus, it is considered appropriate that this offence be one of strict liability. However, as the consumption of liquor is lawful in many circumstances, this is reflected in the maximum penalty of five penalty units being applied.

Seizure of liquor in bus New section 60

This provision replicates the provision for light rail services to align the regulatory settings across the Territory's public transport network.

Consistent with provisions in the *Liquor Act 2010*, this provision gives a bus driver, authorised person or police officer the power to seize liquor or low-alcohol liquor in circumstances where they have told the person why they are seizing the liquor. If the person from whom the liquor was seized challenges the grounds relied on to seize the liquor, the bus driver, authorised person or police officer must not dispose of the liquor and must proceed to either caution or charge the person. When the liquor has been disposed of, no proceedings may be commenced in relation to the liquor, nor may a caution be issued. This is intended to allow bus drivers, authorised persons and police to deal expeditiously with consumption and possession of alcohol in buses, without commencing proceedings or issuing an infringement notice.

Eating or drinking in bus New section 61

This provision remakes existing section 55 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to eat or drink in a bus contrary to a sign in the bus indicating when a person may or may not eat or drink in a bus. This offence does not apply when the person is eating or drinking for medical reasons. The maximum penalty for this offence is five penalty units. It is not intended that this offence be applied to people drinking water or for mothers feeding their children.

Animal in bus New section 62

This provision remakes existing section 62 in accordance with current drafting practices.

This provision makes it a strict liability offence for a person to travel on a bus with an animal without the permission of the driver. This offence does not apply to an animal

that is a guide-dog or other animal assisting a person with a disability or an animal that is being trained to assist a person with a disability. The maximum penalty for this offence is five penalty units.

Lost property found on bus
New section 63

This provision remakes existing section 67 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to find something that appears to be lost in a bus and not give the thing to its owner, the accredited operator of the bus, bus driver, police officer or authorised person. The maximum penalty is five penalty units.

Removing bus property
New section 64

This provision in part remakes existing section 60 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to remove property belonging to an accredited operator of a bus service, without the operator's consent, from a bus or bus stop. The maximum penalty for this offence is 10 penalty units.

This provision introduces a new strict liability offence in relation to Territory property on buses and bus stops. It makes it a strict liability offence for a person to remove property belonging to the Territory, without the Territory's consent, from a bus or bus stop. The maximum penalty for this offence is 10 penalty units. This is consistent with the regulatory settings for light rail services.

Property includes equipment, infrastructure, furniture, signs and fittings.

Separate offences are required in the Public Passenger Services Regulation to enable the accredited operators of bus services to take action quickly to address this matter. Serious offences will be referred to police and prosecuted under existing offences in the Crimes Act.

Damaging bus property
New section 65

This provision replicates the provision for light rail services to align the regulatory settings across the Territory's public transport network.

This provision makes it a strict liability offence for a person to damage property that belongs to an accredited operator of a bus service without the consent of the bus operator. The maximum penalty for this offence is 10 penalty units.

This provision introduces a new strict liability offence in relation to Territory property on buses and bus stops. It makes it a strict liability offence for a person to damage

property that belongs to the Territory without the consent of the Territory. The maximum penalty for this offence is 10 penalty units.

Property includes equipment, infrastructure, furniture, signs and fittings.

Separate offences are required in the Public Passenger Services Regulation to enable the accredited operators of bus services to take action quickly to address this matter. Serious offences will be referred to police and prosecuted under existing offences in the Crimes Act.

Interfering with security camera or recording New section 66

This provision remakes existing section 69 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to interfere with a security camera fitted to a bus. The maximum penalty is 20 penalty units.

This provision makes it a strict liability offence for a person to change or otherwise interfere with a recording made by a security camera fitted to a bus. The maximum penalty is 20 penalty units.

Interfering with bus equipment New section 66A

This provision remakes existing section 57 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to interfere with equipment attached to, or forming part of, a bus or the correct operation of equipment attached to, or forming part, of a bus. The maximum penalty for this offence is 10 penalty units.

Littering in bus New section 66B

This clause remakes existing section 61 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision makes it a strict liability offence for a person to deposit litter in a bus. The maximum penalty is five penalty units. This offence does not apply when the litter is placed in a container provided for the collection of litter.

This provision makes it a strict liability offence for a person to deposit anything that may endanger a person or property in a bus. The maximum penalty is five penalty units.

Separate offences are required in the Public Passenger Services Regulation to enable the accredited operators of bus services to take action to address this behaviour in a timely manner to protect the safety of the public and protect property.

Bus driver, authorised person or police officer—power to direct person to get off, or not get on, bus

New section 66C

This provision remakes existing sections 63 and 65 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision gives a bus driver, police officer or authorised person the power to direct a person to leave a bus or not get on a bus, if the bus driver, police officer or authorised person believes on reasonable grounds that:

- The person is committing, or has just committed an offence under part 3.2 (Bus tickets) or part 3.3 (Bus passengers) of the Public Passenger Services Regulation.
- The person's clothing may soil or damage the bus or the clothing of someone else on the bus.
- The person is carrying an item that may soil or damage the bus or an item of someone else on the bus.
- The person is carrying goods that cannot, because of their size or nature, be carried in the bus without inconvenience or danger to someone else on the bus. This does not extend to items used by a person with a disability to alleviate the effect of the disability.
- The person is under the influence of liquor or a drug and is causing, or likely to cause, a nuisance or annoyance to someone else.

This provision makes it a strict liability offence to fail to comply with a direction given by a bus driver, police officer or authorised person on the above grounds. The maximum penalty for this offence is five penalty units.

Police officer—power to remove person from bus

New section 67

This provision remakes existing section 66 in accordance with current drafting practices and the regulatory settings for light rail services.

This provision gives a police officer the power to remove a person from a bus if the person has been given a lawful direction to leave a bus or not get on a bus and has failed to comply with that lawful direction.

Clause 44

Sections 67A and 67B

This clause remakes existing section 67A and provides that in addition to the Territory operating a bus service under the name ACTION, it can also operate a bus service under the name Transport Canberra.

Clause 54**Dictionary, definition of *dealer***

This clause omits the definition of *dealer* from the dictionary consequential on changes made by clause 53.